

Animas-La Plata Project
Amendatory Contract with San Juan Water Commission
June 12, 2001 Contract Issues on 7/09/2001 Draft Contract
(Annotated by San Juan Water Commission Team 6-20-01)

NOTE: The bolded, redlined, and strike-out language reflects changes from the 6/26/2001 meeting. The [bracketed] comments are previous questions the SJWC has about the issues.

Explanatory Recitals (Rec.)

1. ~~Page 1, Rec. (a) - Commission requested that their language from Page 2, line 4-9 be added to express support for application of PL 93-638. New Recital (d) resolves.~~
2. Page 3, Rec. (i) - Why was the word "perpetual" stricken?
3. Page 3, Rec. - Request to add Commission's Whereas (c) and (d) here or Art. 8.
- C 4. ~~Page 2, Rec. - Request to add Commission's Whereas (e), (f), (g), and (h). Added~~

Article 1

- C 5. ~~Page 3, Art.1(c) - Change definition of Project to "as modified by PL 106-554". OK~~
6. Page 3, Art.1(d) - Resolve how to define Project Operator - See Commission's definition. Identify the entity.
- C 7. ~~Page 3, Art.1(c) - Request to use Commission's definition of Project Works. Compare to PL 106-554. Revised~~
8. Page 3, Art.1(f) - Request to add Commission's definition of Project Storage.
9. Page 3, Art.1(f) - Question expressed on what constitutes "Project Water".
10. Page 3, Art.1(f) - Request to use Commission's definition of Project M&I Storage. What is the meaning of "by means of Project Works" in this sentence?
11. Page 4, Art.1(g) - Why does the Cost Sharing Agreement need to be amended?
12. Page 4, Art.1(g) - Request to add new definition for Capital Obligation.
- C 13. ~~Page 4, Art.1(h) - Request to add "as amended by Public Law 106-554" to this definition. Added~~

14. Page 4, Art.1(i) - Review definition of Administrative Costs. May need to distinguish between old (pre-2001) and new (post-2001) administrative costs. See Commission's proposed changes. [Explain split in costs]
 15. Page 4, Art.1(j) - Need to resolve definition of consultation - why was it changed? Request to add "reasonable and unforeseen costs". Commission prefers incorporating the need to reach consensus.
 16. Page 4, Art.1(m) - Check definition of Repayment Obligation - be consistent with PL 106-554. Request to use and define Reimbursement Obligation instead - see Commission's definition.
 - C 17. Page 5, Art.1(n) - Request to add storage to definition of Relinquished Water - be consistent with PL 106-554 substitute "storage" for "water" in term and in definition itself.
 18. Page 5, Art.1 – Define "Construction Committee" from SJWC draft.
 19. Page 5, Art.1 – Define "Project Operations Committee from SJWC draft.
- Article 2
20. Page 5, Art.2 - Commission wants to be consulted and also wants allocable costs **in (a) limited to least cost alternative subject to cost containment** - see their page 7. **Change Article 2(a), then address in Article 8.**
 - C ~~21. Page 5, Art.2 - Request to add "and maintenance" after Project Operation.~~ **Added**
 - C ~~22. Page 5, Art.2(a)2 - Is "Other Project Water users" needed at the end of the sentence?~~ **Deleted**
 - C 23. Page 5, Art.2(a)4 - Check wording of subarticle (4) - when will project operator be identified? [When will U.S. operate works? Will it have a role in operations even though it is not the "operator"?]
 - C ~~24. Page 6, Art.2(b) - Determine whether to use old subarticle (b) or old (c) or both. [SJWC tentatively agrees to keep old (c)]~~ **Resolved**
 - C ~~25. Page 6, Art.2(c) - Request to add reference to Record of Decision.~~ **Added**
 - C 26. Page 6, Art.2(d) - Can last sentence be deleted? **Split subarticle (c) and reword.**
 27. Page 6, Art.2(e) - Why was subarticle (e) stricken? Commission wants to retain. **The history and purpose of this subarticle will be researched.**

Article 3

- C 28. ~~Page 7, Art.3(a) - Revise to reflect an amended Consent Decree - move subarticle since this is not a precedent to construction. Revised and moved to Article 7(d).~~
- C 29. ~~Page 7, Art.3(b) - Move subarticle to a recital since this is not a precedent to construction. Moved to Recital (f).~~
- C 30. ~~Page 7, Art.3(c) - (legal and financial capacity now recital "e" in SJWC draft) - Move subarticle to a recital since this is not a precedent to construction. [Bureau agreed to this in #4] Moved to Recital (e).~~
31. Page 7, new 3(a) - Commission questions the need to amend the 1986 Cost Sharing Agreement.
- C 32. ~~Page 7, new 3(b) - Request to add reference to PL 106-554. Added~~
33. Page 7, new 3(c) - Can policy be deleted from last line ?

Article 4

34. Page 7, Art.4 - Commission advocating a special committee **on cost containment**, with limited representation, to deal strictly with cost issues. **Discussed/See SJWC's Input**
- C 35. Page 8, Art.4(a)&(b) - Determine how to word language on committees. Concern expressed of providing too much specifics in this contract. **Reviewed/Close**

Article 5

36. Page **10**, Art.5(a) - Why was the word perpetual stricken? Subarticle needs minor editing [add storage] - see Commission's changes. What is the meaning of "a share of 20,800 AF"?
37. Page 10, Art.5(b) - Request to add "except for actions taken by the United States" - see Commission's changes to 5(b). This addition needs legal review.

Article 6

38. Page 11, Art.6 - This article may need revisions to reflect changes in definition of Project Water.
39. Page 11, Art.6(a) - Why was the word permanent stricken? Request to add "run of the river" ~~and add permit numbers~~ to this subarticle. Resolve language concerning storage.
- C 40. ~~Page 11, Art.6(a) - refer to State Engineer Office permits. Added~~

41. Page 11, Art.6(a)&(b) - Explain why percentage limits are needed. Explain effect of deleting lines 20 and 21 [holdover rights allowed?]
- C ~~42. Page 11, Art.6(b) - Leave storage amount blank here and in other places in contract until amount is so determined. **Ok to use 3,025 AF of storage.**~~
- C ~~43. Page 11, Art.6(c) - Cite entire phrase from the law concerning this. **Completed/Moved**~~
44. Page 11, Art.6(c) - Commission would like some recognition that they may pursue the use of uncontracted/unused stored water.

Article 8

- C 45. Page 13, Art.8(a) - Request to use the word storage, not water in this subarticle. Clarify that costs are based on storage. **Resolve where to add storage.**
- C 46. Page 13, Art.8(a) - Need to clarify what is meant by "prior to initiation of construction".
47. Page 13, Art.8(a) - Resolve how to address inflation in Article 8(a). Since Commission is not concerned with risk of future obligation, some of Art.8(a) could be deleted.
- C 48. Page 13, Art.8(a) - Specify when up-front payment is due. **Same as #46.**
- ~~C 49. Page 14, Art.8(b) - Request to state that interest from escrow account will be returned to the Commission. **Added to Article 8(b).**~~
50. Page 14, Art.8(b) - Need more details about escrow payments.
51. Page 14, Art.8(d) - Review language in subarticle 8(d) - Issues concerning storage vs. water and amount of water (20,800 vs. 3,025AF). See Commission's changes to their Article 8(a), our subarticle (d) here.
52. Page 14, Art.8(d) - Revise subarticle (d) to reflect Commission's purchase of storage.
- ~~C? 53. Page 14, Art.8(e) - Provide option for Commission to pay any up-front shortages during the construction period. See language in Article 8 of original contract. **Completed?**~~
54. Page 15, Art.8(e) - Commission concerned about allowing for Water Supply Act deferment.
55. Page 16, Art.8(f) - Could this relinquished water be allocated to other NM purposes? Revise to reflect storage purchase not water.

56. Page 18, Art.8(g) - Review this language in 8(g) and the definition of administrative costs. [PL 93-638 issue here]

57. Page 18, Art.8(h) – Define “Use of Facilities Procedure” and agree upon it.

C ~~58. Page 18, Art.8(i) – Electronic Fund Transfers only.~~ **Resolved**

Article 9

59. Page 19, Art.9 - Request to use the term reimbursement not repayment, here and elsewhere - this may be in conflict with PL 106-554. Use Storage vs. water [Conflict?]

Article 10

60. Page 20, Art.10 - Request to use the term storage, not water in Article 10.

61. Page 20, Art.10(a) - Determine how to allocate OM&R costs for evaporation - Should U.S. pay a share of OM&R for their 30,000 AF?

62. Page 20, Art.10(b) - Can OM&R payments be advanced quarterly?

Article 11

63. Page 21, Art.11(a) – Request to revise to reflect current use of water by SJWC under State Engineer permits. [Add incremental determination of evaporation allocations]

64. Page 21, Art.11(b) - Is Article 10(b) needed and why? Request to use the term storage in this subarticle - see Commission's changes on their page 26.

Article 12

65. Page 22, Art.12 - Concern expressed why old language was revised. [Re shortage.]

Article 15

C 66. Page 22, Art.15(a) - Are lines 28 through 30 needed? Why?

67. Page 23, Art.15(b) - Request to add the term storage to this subarticle - see Commission's changes on their page 28.

Article 18

68. Page 24, Art.18(a) – Request to add the term storage to this Article.

Article 23

69. Page 25, Art.23 – Request to add the term storage to this Article.

Article 24

70. Page 25, Art.24 – SJWC had revisions.

Article 27

71. Page 26, Art.27 - Why is Article 27 on Water Conservation needed if the State requires this on their diversion permits.

C - Denotes that Issue is Close to being Resolved